AGC Associated General Contractors of Washington / WSDOT

ADMINISTRATION TEAM
M I N U T E S

Date: October 14, 2005
Time: 9:00 am
Place: Tacoma AGC Building

Attending								
	Mark Borton	✓	Tim Hayner	✓	Cathy Nicholas	✓
	Jerry Brais		Ann Hegstrom		Ken Olson	✓
	Forrest Dill		David Jones	✓	Mark Rohde	✓
	Bob Glenn		David Mariman	✓	Mark Scoccolo	✓
	Paul Gonseth	✓	Craig McDaniel	✓	Dave Standahl	✓
	Mike Hall		Tina Nelson	✓	Greg Waugh	✓
	Tom Zamzow	✓				

Roundtable The roundtable was skipped in the interest of time.

Old Business – Material Cost and Availability

The Team again discussed materials cost adjustments. The decision to not provide a materials cost adjustment was made through consultation with all the AGC Teams, Roadway, Bridge and Admin. It was decided then that Contractors are in the best position to manage the risk of materials cost and availability. The risk to contractors is that the provisions is implemented at the peak price and results in credits to the state. The Washington Asphalt Paving Association is opposed to any escalation provision that affects asphalt. However, the issue is again being pushed, and with recent hurricane activity it may be worth another look. It was agreed to draft a sample provision and gather input at the next meeting. A provision would be approvable by FHWA if it were done in advance and not retroactive. Roughly 30-40% of states use an escalation clause that is tied to an index. Arizona and Oregon provisions would be good examples.

Materials availability for pipe, steel and lumber is becoming and issue, again due to hurricane activity. The price of HDPE and DI pipe is way up, but the cost seems to be a result of supply rather than demand (manufacturing facilities destroyed by hurricanes). WSDOT had implemented liberalized rules for paying for material on hand (MOH) but these rules (Instruction Letter 4061.00) have expired. The Team voted in support of renewing liberalized MOH rules, and WSDOT will move in this direction. It was noted that this is not a specification revision and the IL will need to be shared with local agencies.

Bonding

Further information indicates that surety companies are not willing to reduce the cost to provide performance and payment bonds for projects. WSDOT is still working toward introducing legislation to reduce the bonding costs for mega-projects over $200 million.

Section 1-08.3 – Progress Schedules

At the last meeting, the team was exploring the possibility of tying payment for mobilization to receiving a progress schedule. Upon further evaluation of this, WSDOT decided to go one step further and provide a bid item for a standard schedule with a minimum bid that a contractor can raise. Further, it was decided to roll all varieties of schedules into the standard specification and allow the project scope to define whether a simple, standard or complex schedule is required. Of course, the complex schedule provision is not yet developed but the provision is designed to be adaptable. It was recommended and agreed that 2-week look-ahead schedules should be incorporated. The Team adopted a payment regimen that rewards early submittal of an approvable schedule.

Replacement schedules (updates) are not measured for payment, so how does the contractor bid their anticipated workload to maintain the schedule? The prevailing theory was that the cost of schedule updates resulting from Contractor-controlled issues (resequencing of work, falling behind schedule, etc) are within the Contractor's ability to manage and therefore their risk. The cost of updates resulting from the Owner actions (delays and change orders that add work) should be negotiated with the change order. Failure to submit a replacement schedule when required would deprive the Owner with the information required to evaluate a request for time extension.

The Team voted to adopt the schedule provision as modified to define payment and include 2-week schedules. It is recognized that guidance for working with the new provisions may be required in the Design and/or Construction Manuals.

Section 1-08.8 Extensions of Time

Most of the changes to this section were proposed during previous meetings. Since then, WSDOT revised this provision to remove an express statement allowing time extensions for failure to obtain materials, and added language to address this condition under the broader category of, "other reasons beyond the control of the contractor." The conclusion of the Team was that such a delay would be excusable, but not compensable as it is neither the fault of the Owner or Contractor.

The Team revisited the language adding Force Account work paid under Section 1-09.6 to the laundry list of reasons that permit a time extension. It was agreed that the added language really confused the issue and should be stripped down to a simple reference to work paid for under Section 1-09.6. The existing language of the Force Account provision already contained the mechanism to permit an extension of time. This issue led to a broader discussion of how Force Account work is defined in the contract. A suggestion was made to define the time estimated to complete the Force Account in the contract. The provisions for drilled shafts were mentioned as a model for how Force

Account work and time for completion might be handled. Although the immediate need to address section 1-08.8 was met, this issue has merit for further consideration.

Section 1-08.5 Time for Completions

It was suggested that a stand-alone provision for a Critical Materials Suspension might be a non-issue if material acquisition that delays the project may be evaluated for a time extension.

Also noted was that Section 1-08.4 needs to be finalized to be harmonious with the rewrite of Section 1-08.5.

Next Meeting

The next meetings are scheduled for:

Friday, November 18
Friday, December 9, 2005
Friday, January 13, 2006
Friday, February 17
Friday, March 10
Friday, April 14
Friday, May 12

The meeting adjourned at 12:00 noon.

Subject Area	Sponsor
Section 1-08.3	Craig McDaniel
1-08.3 alternate simple job	Paul Gonseth
1-08.3 alternate complex job	Forrest Dill
Section 1-08.4	David Mariman
Section 1-08.5	Paul Gonseth/Greg Waugh
Section 1-08.5 (sub) Critical Materials Spec	Mark Borton
Section 1-08.5 (sub) Variable Start Date	Dave Standahl
Section 1-08.5 (sub) Alternate Shifts (could be a family of specs)	Tim Hayner
Section 1-08.5 (sub) Work not Allowed (events, traffic, permit provisions)	Paul Gonseth
Section 1-08.6	Dave Jones

Section 1-08.7	Ann Hegstrom
Section 1-08.8	Mark Scoccolo
Review, Summarize Region Specials	Craig McDaniel

Team's "Round Tuit" List (cont)

1. Tort Claims Liability/Accident Reports
2. Bid Item for On-site Overhead
3. Disputes Review Boards
4. Joint Training—Documentation
5. Payroll, Wage Administration procedures
6. Materials on Hand provisions
7. Web-Based Construction Management

DRAFT Amendment to the 2006 Standard Specifications

Section 1-08.3 is revised to read:

1-08.3 Progress Schedule

1-08.3(1) General Requirements

Submit Type A or B Progress Schedules and Replacement Schedules to the Engineer for approval as defined below or required by the Special Provisions. Except for Weekly Activity Schedules, all schedules shall meet these General Requirements.

Show physical completion of all work within the specified contract time. Show the planned order of work. Comply with all order of work requirements included in the contract documents. Show durations in working days as defined in Section 1-08.5 or as modified in the Special Provisions. Display all activities necessary to complete the work. Define activities in small enough durations that the work can be described in recognizable detail. Individual activity durations shall be reasonable for the included work. Show the inter-relationship of all activities in a logical sequence.

The Engineer will evaluate the Progress Schedule and respond within 15 calendar days of receiving the submittal.

The Contracting Agency will approve a Progress Schedule indicating an early physical completion date provided that all other contract requirements are met.

If the Engineer deems that the Progress Schedule or any necessary Replacement Schedule does not provide the information required, it will be returned to the contractor for correction and resubmittal. Resubmitted schedules must comply with the timelines described in Section 1-08.3(3).

The Engineer's approval of any schedule shall not transfer any of the Contractor's responsibilities to the Contracting Agency. It is the contractor's responsibility for adjusting forces, equipment, and work schedules to ensure completion of the work within the time(s) specified in the contract.

1-08.3(2) Progress Schedule Types

Type A Progress Schedules may be used on all contracts that have a bid amount less than 2 million dollars and have working days of 30 days or less. Type B Progress Schedules are required for use on all contracts that have a bid amount equal to or greater than 2 million dollars or have more than 30 working days.

1-08.3(2)A Type A Progress Schedule

Submit a Type A Progress Schedule no later than the first working day as defined in Section 1-08.5. Develop the schedule by a critical path, bar graph or similar type method.

1-08.3(2)B Type B Progress Schedule

No later than seven calendar days after the date the contract is executed, communicate with the Project Engineer to describe planned work to be performed during the first stages of the project until the time that the Progress Schedule has been submitted and reviewed. Where the first stages are complex or extensive, the Project Engineer may require that the preliminary schedule information be submitted in written form, including a description of the activities, the duration of each and the relationship to other early activities.

Submit a Type B Progress Schedule no later than thirty calendar days after the date the contract is executed. Upon request, the Project Engineer may approve an extension of this time up to an additional thirty calendar days provided the project is of long enough duration and of sufficient complexity to warrant additional schedule preparation time.

Develop the Type B Progress Schedule by the Critical Path Method. Restraints, in addition to dummy activities, may be utilized, but may not serve to change the logic of the network or the critical path. If the schedule is submitted using a methodology other than a network diagram (arrow or precedence), the method used shall either clearly display or be accompanied by a list of information typically used in network diagram methodology. Include the following information in the Progress Schedule:

Construction Start Date
Critical Path defined
Activity description
Event description
Duration of activity
Other activities preceding each activity
Other activities succeeding each activity
Early Start (ES) and Finish (EF) for each activity
Late Start (LS) and Finish (LF) for each activity
Total (TF) and Free (FF) float for each activity
Dummy activities
Physical Completion Date

1-08.3(2)C Weekly Activity Schedule

Each week that work will be performed, submit a Weekly Activity Schedule showing the Contractor's and all subcontractors' proposed work activities for the next two weeks. Include the description, duration and sequence of work, along with the planned hours of work. Prepare the Weekly Activity Schedule in a bar graph or similar type method.

Submit the Weekly Activity Schedule to the Engineer by the midpoint of the week preceding the scheduled work, or some other mutually agreed upon submittal time.

1-08.3(3) Replacement Schedules

Replacement Schedules shall be of the same type as required for the Progress Schedule. Submit Replacement Schedules when the project has experienced a significant change that appears to affect the critical path, when the sequence of work is changed from that in the approved Progress Schedule, when the project is significantly behind schedule, after receiving notice of a contract time extension, or when requested by the Project Engineer. A "significant" change or delay is defined as, 10 working days or 10 percent of the original contract time, whichever is greater.

Show the plan to complete the remaining work on the project in the remaining contract time. Show any changes to the as constructed and the as-planned order of work, any approved time extensions, any approved change orders, or other conditions that will affect the progress of the work. Unresolved issues with asserted time effects may be reflected in a replacement schedule by assuming no time extension and showing the effects to follow-on activities that will be necessary to complete the project within the currently allotted time for completion.

Submit Replacement Schedules to the Project Engineer within fifteen calendar days of receiving written notice of the Engineer's order. Upon request, the Project Engineer may approve an extension of this time up to an additional fifteen calendar days provided the project is of long enough duration and of sufficient complexity to warrant additional schedule preparation time.

1-08.3(4) Measurement

Type A Progress Schedules will not be measured for Payment.

No specific unit of measurement shall apply to the lump sum item for Type B Progress Schedule.

Weekly Activity Schedules will not be measured for payment.

Replacement Schedules will not be measured for payment.

1-08.3(5) Payment

Payment will be made in accordance with section 1-04.1, for the following bid item when it is included in the proposal:

"Type _____ Progress Schedule", lump sum (Min. Bid $_____, Lump Sum).

The Lump Sum price, at the minimum price or more stated in the bid proposal, shall be full pay for all costs for furnishing all progress schedules and replacement schedules required by this Section.

The Contracting Agency has entered a minimum amount in the bid proposal to become a part of the Contractors bid. Should the Contractor determine that the cost for

this work is greater than the minimum price shown in the bid proposal, the Contractor may bid a higher price. Should the Contractor write in a unit price less than the minimum price shown in the bid proposal, the minimum lump sum price shown in the bid proposal shall govern and become part of the bid.

Payment of 80 percent of the lump sum amount will be made upon approval of the initial Progress Schedule.

Payment will be increased to 100 percent of the lump sum amount upon completion of 80 percent of the original total contract award amount.

DRAFT Amendment to the 2006 Standard Specifications

Section 1-08.4 is revised to read:

1-08.4 Prosecution of Work

The Contractor shall begin work within 45 calendar days from the date the contract is awarded or within 21 calendar days of execution of the contract by the Contracting Agency, whichever is later, unless otherwise approved in writing. The Contractor shall diligently pursue the work to the physical completion date within the time specified in the contract. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the work within the time(s) specified in the contract.

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1-08.5 Time for Completion

The Contractor shall complete all physical contract work within the number of "working days" stated in the Contract Provisions or as extended by the Engineer in accordance with Section 1-08.8. Every day will be counted as a "working day" unless it is a nonworking day or an Engineer determined unworkable day.

A nonworking day is defined as a Saturday, a Sunday, a day on which the contract specifically suspends work, or one of these holidays: January 1, the third Monday of January, the third Monday of February, Memorial Day, July 4, Labor Day, November 11, Thanksgiving Day, the day after Thanksgiving, and Christmas Day. When any of these holidays fall on a Sunday, the following Monday shall be counted a nonworking day. When the holiday falls on a Saturday, the preceding Friday shall be counted a nonworking day. The days between December 25 and January 1 will be classified as nonworking days.

An unworkable day is defined as a half or whole day the Engineer declares to be unworkable because of weather or conditions caused by the weather, that prevents satisfactory and timely performance of the work on the projects critical path, as defined in Section 1-08.3. Other conditions beyond the control of the Contract may qualify for an extension of time, in accordance with Section 1-08.8.

Contract time shall begin on the first working day following; the 45th calendar day after the date of award or the 21st calendar day after the date of execution, of the contract by the Contracting Agency, whichever is later. Except if the Contractor starts work on the project at an earlier date, then contract time shall begin on the first working day when work onsite begins. The contract provisions may specify another starting date for contract time, in which case, time will begin on the starting date specified.

Each working day shall be charged to the contract as it occurs, until the contract work is physically complete. If substantial completion has been granted and all the authorized working days have been used, charging of working days will cease. Each week the Engineer will provide the Contractor a statement that shows the number of working days: (1) charged to the contract the week before; (2) specified for the physical completion of the contract; and (3) remaining for the physical completion of the contract. The statement will also show the nonworking days and any half or whole day the Engineer declares as unworkable. If the Contractor disagrees with any statement it shall be protested in accordance with Section 1-04.5.

The Engineer will give the Contractor written notice for the following completion dates as defined in Section 1-01.3, as applicable:

Substantial Completion Date.

Physical Completion Date. That date shall constitute the physical completion date of the contract, but shall not imply the Secretary's acceptance of the work or the contract.

Completion Date. The following events must occur before the Completion Date can be established:

1. The physical work on the project must be complete; and
2. The Contractor must furnish all documentation required by the contract and required by law, to allow the Contracting Agency to process final acceptance of the contract. The following documents must be received by the Project Engineer prior to establishing a completion date:
    a. Certified Payrolls (Federal-aid Projects)
    b. Material Acceptance Certification Documents
    c. Annual Report of Amounts Paid as MBE/WBE Participants or Quarterly Report of Amounts Credited as DBE Participation, as required by the Contract Provisions.
    d. FHWA 47 (Federal-aid Projects)
    e. Final Contract Voucher Certification

DRAFT Amendment to Standard Specifications 2006

Section 1-08.8 is revised to read:

1-08.8 Extensions of Time

If performance of any part of the work is delayed for reasons that allow a time extension as described in this section, immediately provide written notice of the delay to the Engineer and follow the requirements of Section 1-04.5. Requests for time extension shall be limited to the affect on the critical path of the Contractor's Approved schedule attributable to the change or event giving rise to the request.
To be considered by the Engineer, the request shall be in sufficient detail (as determined by the Engineer) to enable the Engineer to ascertain the basis and amount of the time requested. The request shall include an updated schedule that supports the request and demonstrates that the change or event: (1) had a specific impact on the critical path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by resequencing of the work or other reasonable alternatives. If a request, combined with previous extension requests, equals 20 percent or more of the original contract time then the request must bear consent of Surety. In evaluating any request, the Engineer will consider how well the Contractor used the time from contract execution up to the point of the delay and the effect the delay has on any completion times included in the special provisions. The Engineer will evaluate and respond within 15 calendar days of receiving the request.

The authorized time for physical completion will be extended for a period equal to the time the Engineer determines the work was delayed because of:

1. Unworkable weather, provided that:
    a. The Engineer had not already allowed it as an unworkable day under Section 1-08.5, and
    b. The Contractor had submitted a written protest conforming to Section 1-04.5 asserting that time charged as a working day should have been allowed as an unworkable day.

2. Any action, neglect, or default of the Contracting Agency, its officers, or employees, or of any other contractor employed by the Contracting Agency;

3. Delays or interruptions for an unreasonable period of time by an act of the Contracting Agency in the administration of the contract, or by failure to act within the time specified in the contract (or if no time is specified, within a reasonable time).

4. Fire or other casualty for which the Contractor is not responsible;

5. Strikes;

6. Any other conditions for which these Specifications permit time extensions such as:

    a. In Section 1-04.4 if a change increases the time to do any of the work including unchanged work;
    b. In Section 1-04.5 if increased time is part of a protest that is found to be a valid protest;
    c. In Section 1-04.7 if a changed condition is determined to exist which caused a delay in completing the contract;
    d. In Section 1-05.3 if the Contracting Agency does not approve properly prepared and acceptable drawings within 30 calendar days;
    e. In Section 1-07.13 if the performance of the work is delayed as a result of damage by others;
    f. In Section 1-07.17 if the removal or the relocation of any utility by forces other than the Contractor caused a delay;
    g. In Section 1-07.24 if a delay results from all the right of way necessary for the construction not being purchased and the special provisions does not make specific provisions regarding unpurchased right of way;
    h. In Section 1-08.6 if the performance of the work is suspended, delayed, or interrupted for an unreasonable period of time that proves to be the responsibility of the Contracting Agency; or
    i. In Section 1-09.11 if a dispute or claim also involves a delay in completing the contract and the dispute or claim proves to be valid.
    j. In Section 1-09.6 for work performed on a force account basis.

7. If the actual quantity of work performed for a bid item was more than the original plan quantity and increased the duration of a critical activity. Extensions of time will be limited to only that quantity exceeding the original plan quantity.
8. Exceptional causes not specifically identified in items 1 through 7, provided the request letter proves the Contractor had no control over the cause of the delay and could have done nothing to avoid or shorten it.

Working days added to the contract by time extensions, when time has overran, shall only apply to days on which liquidated damages or direct engineering have been charged, such as the following:

If substantial completion has been granted prior to all of the authorized working days being used, then the number of days in the time extension will eliminate an equal number of days on which direct engineering charges have accrued. If the substantial completion date is established after all of the authorized working days have been used, then the number of days in the time extension will eliminate an equal number of days on which liquidated damages or direct engineering charges have accrued.

The Engineer will not allow a time extension for any cause listed above if it resulted from the Contractor's default, collusion, action or inaction, or failure to comply with the contract.

The Contracting Agency considers the time specified in the special provisions as sufficient to do all the work. For this reason, the Contracting Agency will not grant a time extension for:

- Failure to obtain all materials and workers except as provided above;
- Changes, protests, increased quantities, or changed conditions (Section 1-04) that do not delay the completion of the contract or prove to be an invalid or inappropriate time extension request;
- Delays caused by nonapproval of drawings or plans as provided in Section 1-05.3;
- Rejection of faulty or inappropriate equipment as provided in Section 1-05.9;
- Correction of thickness deficiency as provided in Section 5-05.5(1)B.

The Engineer will determine the reasons for and duration of time extensions, and such determination will be final as provided in Section 1-05.1.